LIBRARY

FILED
AUG 10 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 140

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a Corporation,
Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

WENDELL J. DOGGETT,*
JEFF A. ROBERTSON,
CHAS. VANCE,
C. C. LINLEY,
G. R. REDDING,
THOMAS M. LOFTON,
Post Office Box 1348,
Kansas City, Missouri 64141,
Attorneys for Panhandle Eastern Pipe Line Company.

BAKER & DANIELS,
810 Fletcher Trust Building,
Indianapolis, Indiana,
Of Counsel.

*Attorney upon whom service should be made.

R. L. Hemingway Co., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

INDEX TO BRIEF

MOTION TO DISMISS 1
OPINION BELOW 2
JURISDICTION 2
QUESTIONS PRESENTED 2
STATEMENT 2
ARGUMENT 6
The Judgment of the Kansas Supreme Court Rests Upon an Adequate Nonfederal Ground, and No Federal Question Was Properly Raised 6
The State Corporation Commission of the State of Kansas, Not Private Pipe Line Companies, Should Determine the Amount of Natural Gas Which May Be Produced from the Kansas Hugoton Gas Field 7
CONCLUSION 12

Index of Appendices

Appendix

A Order of Consolidation, District Court of Stevens County, Kansas February 13, 1960 ..... A1

B Order for Consolidation and Directing Parties to Proceed in the District Court of Stevens County, Kansas, February 6, 1960 ..... A3

C Motion to Quash Filed by Kansas-Nebraska Natural Gas Company, Inc., in the District Court of Stevens County, Kansas, on February 12, 1960 A5

D Notice of Appeal and Specification of Errors Filed by Kansas-Nebraska Natural Gas Company, Inc., in the District Court of Stevens County, Kansas A7

Table of Cases and Statutes

Bandini Petroleum Co. v. *California Superior Ct.*, 284 U.S. 8 (1931) 10
Black v. *Cutter Laboratories*, 351 U.S. 292 (1956) 6
Cramp v. *Board of Public Instruction of Orange County, Florida*, 368 U.S. 278 (1961) 6
Fox Film Corp. v. *Muller*, 296 U.S. 207 (1935) 6
Holley v. *Lawrence*, 317 U.S. 518 (1943) 6
Stembridge v. *State of Georgia*, 343 U.S. 541 (1952) 6
Natural Gas Act, 15 U.S.C., §717(b) 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 140

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., a Corporation,
Appellant,

vs.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, AND PANHANDLE EASTERN PIPE LINE COMPANY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Panhandle Eastern Pipe Line Company, appellee, moves to dismiss this appeal from the judgment of the Supreme Court of the State of Kansas on the grounds that such judgment rests on adequate nonfederal bases, that the alleged federal question was not properly raised and that no substantial federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Kansas is reported at 192 Kan. 29, 386 P.2d 288 (Jurisdictional Statement A1).

JURISDICTION

Appellant attempts to invoke the jurisdiction of the Supreme Court of the United States under 28 U.S.C., § 1257 (2).

QUESTIONS PRESENTED

Whether the judgment of the Supreme Court of the State of Kansas rests on an adequate nonfederal ground, whether any federal question is properly raised and whether the State Corporation Commission of the State of Kansas or private pipe line companies shall fix the amount of natural gas to be produced from the Kansas Hugoton gas field.

STATEMENT

This case concerns orders entered by the State Corporation Commission of the State of Kansas.[1] In 1956, the Kansas Commission began hearings to reconsider the method by which it calculated the amount of natural gas to be produced from wells located in that part of the

1. Cases related to this proceeding and on appeal to this Court are No. 75, *Colorado Interstate Gas Company* v. *The State Corporation Commission of the State of Kansas et al.*, and No. 83, *Northern Natural Gas Co. et al.* v. *State Corp. Commission of the State of Kansas et al.*

Hugoton gas field situated in the State of Kansas. Prior to that time, the Kansas Commission had, after hearings and in the manner described below, fixed the amount of gas to be produced from the Kansas Hugoton field on the basis of monthly estimates submitted by the pipe line companies purchasing gas from that field. Each month the Kansas Commission accepted without question the pipe line companies' estimates, adding to the total estimates the amount of gas, if any, taken in the prior month in excess of the amount fixed by the Commission for that month and subtracting the amount, if any, which under the Commission's order for the prior month any company or companies could have taken but failed to take. Thus, the amounts of gas actually taken by the companies controlled the Kansas Commission's determinations (Jurisdictional Statement A25-A26, A46-A47). The Kansas Supreme Court held that the practice of subtracting amounts of gas not taken was unauthorized under both the applicable Kansas Statute and the Kansas Commission's own orders (*id.* at A46).

Beginning in May, 1956, the Kansas Commission employed several variations in its procedure, finally adopting a method based largely upon the total of the pipe line companies' estimates. The most significant change in the Kansas Commission's procedure was that the amount of gas not taken under the prior month's determination was no longer subtracted from the amount determined by the Commission to be necessary to satisfy the market demand for gas for the current month (*id.* at A26-A27). This has made available to the pipe line companies additional quantities of gas, and the appellant contends that this is unlawful.

Two types of orders issued by the Kansas Commission are involved in this appeal: (1) monthly orders for

each month from October, 1959, through March, 1960, fixing the amount of gas available to be produced in each of those months, and (2) a semiannual order determining the market demand for gas from the Kansas Hugoton field for the foregoing six months' period.

1. **Proceedings Arising in the District Court of Finney County, Kansas.**

Appellant petitioned the District Court of Finney County, Kansas, for judicial review of the Kansas Commission's orders. In each instance this appellee, Panhandle Eastern Pipe Line Company ("Panhandle"), and the appellee Southwest Kansas Royalty Owners Association ("Royalty Owners") intervened.

The Finney County District Court entered judgment affirming the Kansas Commission's semiannual market demand order for October, 1959, through March, 1960, and affirming the orders for each month during that period insofar as they permitted production of gas in excess of that which would have been permitted under the Commission's previous practice consolidated with other similar appeals, all such appeals being docketed by the Kansas Supreme Court as Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated). These cases were disposed of by the Kansas Supreme Court on the nonfederal ground that exclusive jurisdiction to review the Commission's October, 1959, through March, 1960, orders was vested in the Stevens County District Court, petitions for judicial review having been filed there earlier than in the Finney County District Court.

2. **Proceedings Arising in the District Court of Stevens County, Kansas.**

The Royalty Owners and Panhandle petitioned the Stevens County District Court for judicial review of the

Kansas Commission's orders described in the preceding paragraph. All such petitions were consolidated, and in accordance with accepted practice, the Stevens County District Court set the consolidated petitions for trial on February 13, 1960 (Appendix A). By court order dated February 6, 1960, appellant was directed to proceed in the Stevens County District Court, presenting to it the appellant's grievances respecting the Kansas Commission's orders (Appendix B). The appellant refused to comply. Instead, it appeared specially, questioning the Court's jurisdiction, and moved to quash the order entered February 6, 1960 (Appendix C).

Trial of the petitions was held as scheduled on February 13, 1960 (Jurisdictional Statement A61-A63). Appellant neither appeared nor participated in the trial, and there was no request for continuance. On March 10, 1960, the Stevens County District Court entered judgment, affirming the Kansas Commission's orders (*Ibid.*). Neither the Notice of Appeal from that judgment nor appellant's Specification of Errors raises any federal question (Appendix D).

At no time did the appellant intervene in the judicial review proceedings before the Stevens County District Court; to the contrary, it refused to submit to that court's jurisdiction, which the Kansas Supreme Court held was exclusive. Moreover, the appellant failed to preserve any federal question in connection with its attempted appeal from the judgment of the Stevens County District Court.

In summary, in proceedings before the Kansas Supreme Court, review of which is sought here, appellant was a party to Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated) but not to Case 42,038. The judgment of the Kansas Supreme Court in the Consolidated Cases is

based upon a nonfederal ground adequate in itself to sustain the disposition made by that court. While the appellant attempted to appeal in the case to which it was not a party (No. 42,038), it failed to raise any federal question.

ARGUMENT

The Judgment of the Kansas Supreme Court Rests Upon an Adequate Nonfederal Ground, and No Federal Question Was Properly Raised

This Court has repeatedly held that it lacks jurisdiction to review a state court's decision based upon an independent state ground sufficient to support its judgment. A case such as this, as this Court has previously stated, "is controlled by the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935). Decisions acknowledging this rule, in addition to those cited in the *Muller* case, include:

Cramp v. *Board of Public Instruction of Orange County, Florida*, 368 U.S. 278, 281 (1961).

Black v. *Cutter Laboratories*, 351 U.S. 292 (1956).

Stembridge v. *State of Georgia*, 343 U.S. 541 (1952).

Holley v. *Lawrence*, 317 U.S. 518 (1943).

Appellant requests this Court to review a judgment entered by the Kansas Supreme Court in five cases (Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated) and

42,038). Appellant was not a party to Kansas Supreme Court Case 42,038 and, accordingly, can raise no issue in this Court respecting that proceeding. (No federal questions were raised by appellant in the appeal which it did attempt.) Appellant was a party to Kansas Supreme Court Cases 42,175, 42,176, 42,185 and 42,230 (Consolidated), but those proceedings were decided by the Kansas Supreme Court on the unmistakably nonfederal ground that the trial court (District Court of Finney County, Kansas) lacked jurisdiction to review the Kansas Commission's orders covered by such Consolidated Cases because petitions for judicial review of such orders were filed first in the District Court of Stevens County, Kansas.

The State Corporation Commission of the State of Kansas, Not Private Pipe Line Companies, Should Determine the Amount of Natural Gas Which May Be Produced from the Kansas Hugoton Gas Field

The merits of this appeal present only the nonfederal question of whether a majority of the pipe line companies or the Kansas Commission may control the amount of gas which lawfully may be produced from the Kansas Hugoton gas field. Procedural deficiencies previously discussed are dispositive of this appeal. Nevertheless, to dispel any impression that the appellant may be deprived of the opportunity to assert a meritorious case only because of procedural deficiencies, we desire to focus attention upon the issue on the merits and rescue it from the distortion to which it has been subjected by the appellant in its attempt to convert a purely local question into a federal-state conflict.

The litigation in its entirety involves the validity of producing allowables, *i.e.*, the amount of gas which indi-

vidual wells are permitted to produce in a given period of time. It would be difficult to conceive of something more squarely within the function of production, which, under the "production and gathering" exclusion of the Natural Gas Act, is reserved for regulation by the states (15 U.S.C., § 717(b), Jurisdictional Statement 8).

Apart from this rather obvious disposition of appellant's basic contention that the jurisdiction of the Federal Power Commission has been invaded, we call attention to the fact that the true issue raised by appellant is not whether the Kansas Commission or the Federal Power Commission is the agency empowered to set gas well allowables, but whether the Kansas Commission or the pipe line companies should have actual control of the allowables.

In this case, the Kansas Commission's orders specifying the amount of gas that may be taken did not please all producers in the field. The Commission sometimes accepted the nominations as the market demand and sometimes increased them in inconsequential amounts, but no longer deducted underages or added overages for the previous month.

There were three sides to this litigation in the state court. The appellant attacked the Kansas Commission's orders, contending that the Commission was required to deduct underages from, and add overages to, the amount required to satisfy market demand.[2] This has been characterized as the historic method of computing allowables.

---

2. Underages are amounts of gas which could have been produced under prior orders of the Commission, but were not taken by the pipe line companies. Overages are amounts of gas which the pipe line companies have taken in excess of quantities authorized by prior orders of the Commission.

If this was done, the market demand determination had no ultimate effect on allowables because past runs controlled current allowables. Panhandle and the Royalty Owners attacked the orders on the grounds that the actual market demand, as shown by the evidence, vastly exceeded the nominations (estimates of amounts of gas to be purchased) filed by the pipe line companies and that the Commission had no right to let a majority in interest of the pipe line companies determine allowables, either by actual purchases (as was the case if underages were subtracted and overages added each month) or by nominations. The Commission defended its orders but objected to having to defend the same order in more than one court.

Both trial courts, the Finney County District Court, which lacked jurisdiction, and the Stevens County District Court, which had jurisdiction, concluded that the Kansas Commission was not authorized or required to follow the historic method of deducting underages and adding overages. Both courts rejected Panhandle's and the Royalty Owners' contentions that the evidence required a market demand determination substantially in excess of the nominations.

Apart from its conclusions on the procedural questions previously discussed, the Kansas Supreme Court held: (1) The Commission was neither authorized nor required to follow the historic method of deducting underages; (2) Market demand is a question of fact to be determined by the Commission from all of the available evidence, and, although the Commission's market demand determination barely exceeded the total of the nominations, Panhandle and the Royalty Owners had failed to establish that the determination was arbitrary or unreasonable. This second holding is not before this Court because Panhandle and the Royalty Owners have not ap-

pealed. Panhandle's decision in this respect is the product of a practical realization that it is more important that the litigation be terminated than that the allowables for seven years be recalculated on the basis of the full market demand. The first holding is all that is left in the case. Certainly, the question of whether the Kansas Statute directs or permits the Kansas Commission to deduct underages is a question of Kansas law.

The appellant has been candid enough to acknowledge that "At this point in time, the power of the State of Kansas to regulate by limiting the production of natural gas from common sources of supply within the state in order to prevent waste of a valuable resource and to protect the correlative rights of owners of interests in such production is no longer questioned. (*Bandini Petroleum Co.* v. *California Superior Ct.*, (1931) 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103)." (Jurisdictional Statement 26).

In none of the related appeals (Nos. 75, 83 and 140) do the appellants complain of the setting of allowables by the Kansas Commission—providing that the Commission establishes allowables according to the so-called historic method. In fact, this is the totality of the complaint, that the Commission departed from the historic method. Reduced to fundamentals, this method was a procedure whereby the Kansas Commission was limited to performing the mechanical function of a calculating machine, using data furnished by the pipe line companies. Thus the pipe line companies—not the Kansas Commission—controlled allowables by (1) their estimates and (2) the quantities of gas actually taken.

Although in some cases the market demand determined by the Commission after it abandoned the historic method was in excess of the estimates, this was not burdensome to the appellant. Allowables do not compel the

taking of any gas, rather they are permissive and authorize equitable production from each well in a common source of supply.

Appellant complains that it must choose between two alternatives, both of which are detrimental. It may either expand its facilities to accommodate the quantities of gas made available under the Kansas Commission's orders, or suffer cancellation of underages. The fact is that the appellant has not been hurt by the allowables approved by the Kansas Supreme Court. All underages cancelled during times pertinent to this appeal have been or, upon application by the party concerned, will be reinstated, and the Kansas Commission has placed a moratorium upon cancellation of further underages.[3] Moreover, the appellant carefully avoids any representation that its facilities will be unable to accommodate increased quantities of gas, stating instead that "its gathering, processing, compressing and transmission facilities in the Kansas Hugoton Field were operated at near capacity." (Jurisdictional Statement 23). Accordingly, the Kansas Commission's orders will have no adverse effect.

Further, as expressly observed by the Kansas Supreme Court (Jurisdictional Statement A48), the Kansas Commission's prior practice of adding canceled underages to the market demand for gas was not questioned in the Kansas courts. Until added to the market demand, gas constituting the canceled underage simply remains in the ground. Under the existing practice, no one is deprived of anything. It follows that review of the Kansas Commission's orders by this Court would be inappropriate until the only practice which could conceivably

---

3. No. 83, *Northern Natural Gas Company et al. v. State Corporation Commission of the State of Kansas*, Jurisdictional Statement 29, n. 33.

produce injury has been put into effect and has been properly challenged in the Kansas courts.

Though the appellant has tortured the issue in an attempt to make it fit the form of a federal question, the case stripped bare is nothing more than a question of whether a majority of the pipe line companies may control allowables to suit their private purposes or whether the Kansas Commission may set allowables based upon reasonable evidence. Surely this issue, premised upon appellant's contentions that a state court cannot hear evidence of facts which exist outside of its territorial jurisdiction and that, in the future, other states might take some adverse action, presents no substantial question, federal or otherwise.

CONCLUSION

Panhandle Eastern Pipe Line Company, appellee, submits that this appeal should be dismissed because the judgment of the Kansas Supreme Court rests on adequate nonfederal grounds, because no federal question was properly raised and because no substantial federal question is presented.

Respectfully submitted,

WENDELL J. DOGGETT
JEFF A. ROBERTSON
CHAS. VANCE
C. C. LINLEY
G. R. REDDING
THOMAS M. LOFTON

BAKER & DANIELS
810 Fletcher Trust Building
Indianapolis, Indiana
Of Counsel

August, 1964

APPENDIX A

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC

v.

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

DISTRICT COURT OF STEVENS COUNTY, KANSAS

Southwest Kansas Royalty Owners' Association, Petitioner, vs. State Corporation Commission of Kansas, Respondent.	Case No. 4104 4105 4110 4117

Order of Consolidation

Now on this 13th day of February, 1960, this action comes on for trial on the merits pursuant to setting of this case made on the call of the docket on the first day of the January term. Southwest Kansas Royalty Owners' Assn. appears by its attorneys, Dale M. Stucky, Robert Cornwell and A. E. Kramer; the Kansas Corporation Commission appears by J. Robert Wilson and John Townsend, its attorneys, and Panhandle Eastern Pipe Line Co. appears by C. C. Linley and Chas. Vance, its attorneys.

Upon oral motion of Panhandle Eastern Pipe Line Company made in open court, and upon argument of counsel, the court finds that cases 4104, 4109 and 4117, and all of the cases heretofore consolidated with them, should be consolidated with Case No. 4105, the market

demand case, for the purpose of trial, judgment and further proceedings.

It is by the Court so ordered.

L. L. Morgan,
District Judge.

Approved:

C. C. Linley,
Chas. Vance,
By: C. C. Linley,
Attorneys for Panhandle Eastern Pipe Line Company.

J. Robert Wilson,
John Townsend,
By: John D. Townsend,
Attorneys for Kansas Corporation Commission

Dale M. Stucky,
Robert Cornwell,
A. E. Kramer,
By: Dale M. Stucky,
Attorneys for Southwest Kansas Royalty Owners' Association.

Filed: 2-24-60. John F. Fulkerson, Clerk of the Dist. Court.

APPENDIX B

DISTRICT COURT OF STEVENS COUNTY, KANSAS

The Southwest Kansas Royalty Owners Association, Petitioner, vs. The State Corporation Commission of the State of Kansas, Respondent.	Case No. 4105

Order for Consolidation and Additional Parties

Now, on this 6th day of February, 1960, comes on for hearing the motion of Panhandle Eastern Pipe Line Company to Consolidate and Join Additional Parties. Panhandle Eastern Pipe Line Company appears by Jeff A. Robertson, C. A. Conoley, C. C. Linley and Chas. Vance, its attorneys. Southwest Kansas Royalty Owners' Association appears by Dale M. Stucky, Robert Cornwell, and Kramer and Nordling, its attorneys. No other appearances are made.

Evidence is heard; the motion is argued and submitted to the Court.

The Court, being fully advised, finds that this case and Case No. 4107, were filed in this Court by separate plaintiffs both seeking judicial review of the same order of the Kansas Corporation Commission; that petitions also seeking to review the same order were subsequently filed in the District Court of Finney County by Colorado Interstate Gas Company, Northern Natural Gas Company, Cities Service Gas Company and Kansas-Nebraska Gas Company;

The said Commission Order is not subject to piece meal review from case to case and Court to Court; all parties who claim to be aggrieved by said order and who have appealed the same or subsequent monthly proration orders and reports of the Commission based thereon are necessary and indispensable parties to, and will have substantial rights affected by the decision in this case.

The Petition for review of the Commission's market demand determination for the 6 month proration period beginning October 1, 1959 and ending March 31, 1960, was filed in this Court before the petition attacking the same order was filed in any other case in either court; that the Commission's allowable orders for the months of October, November and December, 1959, were each based on the Commission's 6 month market demand determination aforesaid; that the jurisdiction of this Court, as to all four Commission orders, became exclusive upon the prior filing of the market demand controversy herein: that all parties claiming to be aggrieved by said orders should be required to and must present their grievances in a single proceeding.

It Is Therefore by the Court Ordered: That Case No. 4107 in this Court, wherein Panhandle Eastern Pipe Line Company is plaintiff, be, and hereby is consolidated with this case for trial and judgment.

It is further ordered that Northern Natural Gas Company, Colorado Interstate Gas Company, Cities Service Gas Company, and Kansas-Nebraska Gas Company be, and they hereby are directed to file in this Court such counter-abstracts of the record and other pleading as they may deem appropriate, on or before February 13, 1960, and to present to this Court and proceed in this Court only for determination of their grievances with the said Order.

It is further ordered that this order be effective as to each of said parties upon actual notice or knowledge of the entry thereof.

L. L. Morgan,
Judge.

Approved:

Panhandle Eastern Pipe Line Company,
By Chas. Vance,
C. C. Linley,
Southwest Kansas Royalty Owners' Association,
By Dale M. Stucky.

A true copy.

/s/ John F. Fulkerson,
(Seal) Clerk of the District Court of
Stevens County, Kansas.

APPENDIX C

Kansas-Nebraska's Motion to Quash

(Filed February 12, 1960.)

(Caption and Signatures Omitted.)

Comes now Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation, and appears specially for the purpose only of questioning the jurisdiction of this Court by this motion and for no other purpose, and moves the Court to quash its order entered herein on the 6th day of February, 1960. The Order directed the joining of Kansas-Nebraska Natural Gas Company, Inc., as a party to this action, and further ordered Kansas-Nebraska Natural Gas Company, Inc., to file in this Court such counter abstracts and other pleadings as it deems appropriate and

to proceed only in this Court for judicial review of the order of the Kansas Corporation Commission determining market demand for the six months proration period beginning October 1, 1959, and ending March 31, 1960, and of the Commission's allowable orders for the months of October, November and December, 1959, respectively. The said Order should be quashed for the following reasons:

1. This Court does not have jurisdiction or authority to order Kansas-Nebraska Natural Gas Company, Inc., to dismiss the petition for judicial review it has filed in the District Court of Finney County, Kansas, or to otherwise abandon its cause in that Court, or to require Kansas-Nebraska Natural Gas Company, Inc., to file its appeal in and to proceed only in this Court.

2. The provisions of the statute, G.S. 1949, 55-606, do not require that all proceedings for judicial review of an order of the State Corporation Commission, though instituted by different parties in different courts, be consolidated in one proceeding; nor does the statute provide or require that all interested parties must seek redress of such orders by being joined in the proceeding first instituted or by filing their petitions in the District Court where some other party has filed its petition seeking a review of said order.

3. This Court has been granted no authority under the applicable statutes and it has no inherent power to order consolidation of Review proceedings lawfully filed in different District Courts pursuant to G.S. 1949, 55-606, and the pretended Order for Consolidation and Additional Parties entered in this Court on February 6, 1960, is void as to this specially appearing party, Kansas-Nebraska Natural Gas Company, Inc.

Therefore, this Court, in the above numbered proceeding, is without jurisdiction of Kansas-Nebraska Natural Gas

Company or of the subject matter of said corporations' Petition for Judicial Review now on file in the District Court of Finney County, Kansas.

APPENDIX D

Notice of Appeal

Kansas-Nebraska Natural Gas Company

(Filed May 9, 1960.)

(Caption and Signatures Omitted.)

NOTICE OF APPEAL TO THE SUPREME COURT

To: Southwest Kansas Royalty Owners' Association, The State Corporation Commission of the State of Kansas, Panhandle Eastern Pipe Line Company, and all other parties, if any, adversely affected by this appeal, together with their respective attorneys of record.

Take Notice that the undersigned, Kansas-Nebraska Natural Gas Company, Inc., does hereby appeal to the Supreme Court of Kansas from the judgment rendered, entered and made by the Court on the 10th of March, 1960, in the above-entitled action and those actions consolidated therewith and therein whereby said Court, among other things, sustained as valid and confirmed the Report and Order of the State Corporation Commission of the State of Kansas dated November 10, 1959, and subsequent Allowable Orders of said Commission based thereon and made in connection therewith involved therein the Order made and entered on February 6, 1960, as modified by the Order of the Court made on March 10, 1960, whereby Kansas-Nebraska Natural Gas Company, Inc., was ordered and directed to proceed in said Court only for determination of their grievances with the Commission order of Novem-

ber 10, 1959, and subsequent Allowable Orders of said Commission based thereon and made in connection therewith and the action and procedure of the Court therein in denying or failure to rule upon, as the case may be the special appearance motions duly filed by Kansas-Nebraska Natural Gas Company, Inc., to quash, set aside and hold for naught the Order made and entered by the Court therein February 6, 1960, the notice and process upon which the same purports to be based, whereby Kansas-Nebraska Natural Gas Company, Inc., was made a party to the above captioned case and those consolidated therewith, together with all other orders, rulings, directions and procedures entered therein insofar as the same or any of them apply to Kansas-Nebraska Natural Gas Company, Inc., and purport to subject its person, its property or the subject matter of its Judicial Review action or actions pending in the District Court of Finney County, Kansas, to the jurisdiction of the above named Court in the above entitled action or those actions consolidated therewith. (Affidavit of Service appears in Abstract and Counter Abstract of Southwest Kansas Royalty Owners Association on pages 334 to 336.)

SPECIFICATION OF ERRORS

1. The District Court erred in entering its order on February 6, 1960, directing Kansas-Nebraska Natural Gas Company to proceed in the District Court of Stevens County and in that court only to secure relief from the Commission orders which are involved in this appeal.

2. The District Court erred in failing to rule upon or denying, as the case may be, the special appearance Motion To Quash filed in said court on February 12, 1960.

3. The District Court erred in proceeding to hear, consider and determine the merits of the review proceedings filed in said court without first seeking a determina-

tion of its authority to do so in view of the proceedings then pending to review the same Commission orders in the District Court of Finney County, Kansas.

4. The District Court erred in finding that the Report And Order dated November 10, 1959, and the October, November and December, 1959 Allowable Orders are based on substantial competent evidence.

5. The District Court erred in finding that the Report And Order dated November 10, 1959, and the October, November and December, 1959 Allowable Orders are lawful and valid.

6. The District Court erred in finding that inequities exist discriminating in favor of the correlative of producers and royalty owners in the Oklahoma Hugoton Gas Field and against those in the Kansas Hugoton Gas Field and that the Report And Order properly makes orderly provisions for correcting such "inequities."

7. The District Court erred in concluding that the Report And Order in attempting to deal with the rights of producers and royalty owners in the Kansas Hugoton Field in relationship to the rights of producers and royalty owners in the Oklahoma Hugoton Field and to balance the rights of the said producers and royalty owners in the Kansas and Oklahoma portions of the field was a valid exercise of authority conferred upon the Commission by G.S. 1959, Supp. 55-703.

8. The District Court erred in failing to consider on its own motion and to rule upon the constitutionality of G.S. 1959, Supp. 55-703, in view of the nature of the proceedings and the rights of parties whose views were not heard and considered.